

Arizona Supreme Court Staff Attorneys' Office
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IN THE SUPREME COURT OF ARIZONA

In the Matter of)	
)	Arizona Supreme Court No. _____
)	
PETITION TO AMEND RULE 59,)	
RULES OF THE SUPREME COURT)	
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)	RULES OF THE SUPREME COURT
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_____)	

PETITION TO AMEND THE RULES OF THE SUPREME COURT

Pursuant to Rule 28, Rules of the Supreme Court, the Arizona Supreme Court Staff Attorneys' Office petitions the Court to adopt amendments to Rule 59, Rules of the Supreme Court, as proposed in the attachment.

I. BACKGROUND

On June 30, 2010, this Court adopted new rules governing lawyer discipline. New provisions for appeal to the Court replaced the petition for review and sua sponte review process in Rule 59. The new appeal provisions require the disciplinary clerk to docket the appeals, provide a briefing schedule to the parties, and accept the filing of the appellate briefs. Rule 59(e) and (f). The disciplinary clerk transmits the entire record, including any transcripts and the parties' briefs, to the clerk of this Court when the appeal is perfected. Rule 59(j).

II. PROPOSED AMENDMENTS TO RULE 59

The proposed amendments to Rule 59 are loosely modeled on the appellate procedures in the Arizona Rules of Civil Appellate Procedure. The procedures will continue to require the notice of appeal or notice of cross-appeal to be filed with the disciplinary clerk. Rule 59(a). The disciplinary clerk will then transmit the entire record to the clerk of the court upon the filing of the notice of cross-appeal or upon the expiration of the time for filing a notice of cross-appeal. Rule 59(d). The clerk of the court will docket the appeal and send a notice of docketing and briefing schedule to the parties and the disciplinary clerk. Rule 59(f). Having the appellate process in lawyer discipline track the usual appellate procedures will result in less confusion for practitioners and more efficient administration of the process in this Court.

The proposed amendments also delete the provision in subsection (n) requiring that matters involving orders of suspension or disbarment to take precedence over all civil matters in this Court. The new rules governing lawyer discipline reduced the time required to adjudicate discipline charges. In light of these changes, the need to give priority to matters involving suspension or disbarment in this Court is no longer necessary.

III. CONCLUSION

Petitioner respectfully requests that the Court adopt the proposed amendments as reflected in the attachment.

DATED this 9 day of January, 2013.

/s/
Kathleen Ronan Curry
Staff Attorney, Arizona Supreme Court

ATTACHMENT¹

ARIZONA RULES OF THE SUPREME COURT

Rule 59 Review by the Court

(a)-(c) [No change in text.]

(d) Notice of Additional Transcripts. ~~A party requiring additional transcripts for the purpose of appeal shall arrange for transcription at the party's expense. Within ten (10) days of filing the notice of appeal, the party shall file with the disciplinary clerk a notice of intent to file additional transcripts and shall advise when the party anticipates the transcripts will be filed. Upon filing the transcript with the disciplinary clerk, the party shall serve a copy on the opposing party.~~ **Transmittal of Record.** Upon the filing of a notice of cross-appeal, or upon the expiration of time for filing a notice of cross-appeal, the disciplinary clerk shall have ten (10) days to transmit the entire record to the clerk of the court. The disciplinary clerk shall notify the parties of the transmittal of the record.

(e) Notice of Transcripts. Within ten (10) days of the notice of the transmittal of the record, a party requesting transcripts for purposes of appeal shall serve the clerk of the court with a notice designating the transcripts requested. A party requesting transcripts for the purpose of appeal shall arrange for transcription at the party's expense. Within thirty (30) days of the notice designating the requested transcripts, or as otherwise ordered by the clerk of the court, the party shall file the certified transcript with the clerk of the court and serve a copy on the opposing party.

(f) Docketing the Appeal. The disciplinary clerk shall docket the appeal and notify the parties of the docketing and the briefing schedule after the filing of a notice of cross-appeal or the expiration of time for filing a cross-appeal, and upon the filing of any transcript of which the disciplinary clerk has received notice pursuant to paragraph (d). Upon receipt of the record and the filing of any additional transcripts, the clerk of the court shall docket the appeal and send a notice of docketing and filing of the record on appeal and a briefing schedule to the disciplinary clerk, respondent, respondent's counsel, if any, and bar counsel.

(g) Time for Filing Briefs. The appellant's opening brief, and appellee's opening brief in a cross-appeal, if any, shall be filed with the disciplinary clerk of the court no later than thirty (30) days after the notice of docketing. The answering briefs shall be filed with the disciplinary clerk of the court no later than thirty (30) days after service of the opening brief. A reply brief may be filed with the disciplinary clerk of the court no later than fifteen (15) days after service of the answering brief. A party who files a cross-appeal may combine in one brief the opening cross-appeal brief and the answering brief, but such brief shall be filed within the time allowed for filing the brief as cross-appellant.

(h) Briefs; Form, Length, and Content. [No change in text.]

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

~~(h)~~ **Perfection of Appeal.** Perfection of the appeal and cross appeal shall be a precondition of transmitting the record to the court. For purposes of this rule, perfection shall include the timely filing of a notice of appeal or cross appeal and the timely filing of the appellant's or cross-appellant's opening brief.

~~(i)~~ **Abandonment of Appeal; Dismissal.** In the event an appeal or cross appeal is not fully perfected, it shall be deemed abandoned and shall be dismissed by order of the presiding disciplinary judge, with notice to the appellant or cross appellant.

~~(j)~~ **Transmittal of Record.** After the time for filing the appellate briefs has expired and the appeal and cross appeal, where applicable, are otherwise perfected, the disciplinary clerk shall transmit the entire record, including any transcripts and the parties' briefs, to the clerk of the court.

~~(k)~~ **(i) Oral Argument.** Oral argument may, in the court's discretion, be scheduled in an appeal upon request of either party or upon the court's own motion.

~~(l)~~ **(j) Standard of Review.** The court shall review questions of law de novo. In reviewing findings of fact, the court shall apply a clearly erroneous standard.

~~(m)~~ **(k) Form of Decision.** The court may resolve any matter before it by opinion, memorandum decision, or order, as the court may determine in its discretion.

~~(n)~~ **Priority Over Civil Matters.** Matters arising out of orders for discipline in the form of suspension or disbarment shall take precedence over all civil cases in this court.